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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1962

No. 94

BROTHERHOOD OF LOCOMOTIVE ENGINEERS, ET AL., - - - - - Petitioners,

versus

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, - - - - - Respondent.

BRIEF OF LOUISVILLE AND NASHVILLE RAILROAD COMPANY IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1961

No. 868

BROTHERHOOD OF LOCOMOTIVE ENGINEERS;
BROTHERHOOD OF LOCOMOTIVE FIREMEN AND ENGINEMEN;
ORDER OF RAILWAY CONDUCTORS AND BRAKEMEN;
BROTHERHOOD OF RAILROAD TRAINMEN;
H. J. ROADCUP, Individually, and as General Chairman and representative of a class consisting of the members of the Brotherhood of Locomotive Engineers, an unincorporated labor union;
JAKE PASCHALL, Individually, and as General Chairman and representative of a class consisting of the members of the Brotherhood of Locomotive Firemen and Enginemen, an unincorporated labor union;
L. G. MULINIX, Individually, and as General Chairman and representative of a class consisting of the members of the Order of Railway Conductors and Brakemen, an unincorporated labor union;
J. M. KING, Individually, and as General Chairman and representative of a class consisting of the members of the Brotherhood of Railroad Trainmen, an unincorporated labor union, - - *Petitioners,*

v.

LOUISVILLE AND NASHVILLE RAILROAD COMPANY, - - - - - - - *Respondent.*

BRIEF OF LOUISVILLE AND NASHVILLE RAILROAD COMPANY IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

OPINIONS BELOW.

The citations to the Opinions below of the United States District Court for the Western District of Kentucky and the United States Court of Appeals for the Sixth Circuit are correctly reported by the Petitioners.

JURISDICTION OF THE COURT.

Jurisdiction of this Court to review the decision of the United States Court of Appeals for the Sixth Circuit entered December 18, 1961, rehearing denied January 17, 1962, by means of a writ of certiorari is contained in 28 U.S.C. Sec. 1254(1).

COUNTER-STATEMENT OF QUESTIONS PRESENTED FOR REVIEW.

1. Is the enforcement suit remedy provided by Section 3 First (p) of the Railway Labor Act (45 U.S.C. Sec. 153 First (p)) the exclusive means for enforcing awards of the National Railroad Adjustment Board?

2. Is injunctive relief proper to prohibit a strike brought for the purpose of enforcing a money award of the National Railroad Adjustment Board?

STATUTES INVOLVED.

The pertinent provisions of the Railway Labor Act appear in the Appendix, pp. 57-60, *infra*.

COUNTER-STATEMENT OF THE CASE.

The Respondent Louisville and Nashville Railroad Company (hereinafter called L&N) does not accept the statement of the case which appears at pages 4-9 of the Petitioners' brief. The L&N sets forth its own counter-statement of facts.

Summary of the Proceedings Below.

This action was instituted by the L&N on February 12, 1959, against the Brotherhood of Locomotive Firemen and Enginemen, Brotherhood of Locomotive Engineers, Order of Railway Conductors and Brakemen, Brotherhood of Railroad Trainmen (hereinafter referred to as BLF&E, BLE, ORC&B and BRT, respectively), the four General Chairmen on the L&N of those labor organizations and the employees represented by them (5a-7a).[1]

By this action, L&N sought a permanent injunction against a strike threatened by the four labor organizations to enforce a money award of the First Division, National Railroad Adjustment Board (hereinafter called Adjustment Board or Board) in a case involving Fireman B. G. Humphries (15a-16a, 30a-34a).

The case was tried to the Court without a jury. The Court heard the oral testimony of some of the witnesses in open court (30b-125b) and, by agreement

[1]Numerals followed by letter "a" refer to Petitioners' Appendix filed in the Court of Appeals. Numerals followed by letter "b" refer to pages of Appendix of the Respondent filed in the Court of Appeals.

of the parties made in open court (135b-140b), additional evidence was presented by affidavits and exhibits. The witnesses who testified in open court were primarily witnesses presented by the L&N; thereafter, affidavits were filed by the defendants (36a-87a) and by the L&N (141b-288b).

On January 18, 1961, the District Court, having considered the oral testimony, affidavits, exhibits, and the briefs and arguments of counsel, handed down detailed findings of facts and conclusions of law (134a-153a) and entered judgment for the L&N enjoining the defendants from striking for the purpose of enforcing Award No. 18720 of the Adjustment Board, a case involving Fireman B. G. Humphries (153a-157a).

The Court of Appeals for the Sixth Circuit affirmed the judgment of the District Court and expressly concurred in the findings of facts and conclusions of law of the District Court (Petitioners' Appendix, p. 26).

This Petition for a Writ of Certiorari followed.

The Facts as Found by the District Court and as Substantiated by the Record.

This proceeding has its genesis in a dispute between the L&N and the BLF&E over the discharge of Fireman Humphries, a member of the BLF&E (135a, 36a-37a, 31b-32b, 91b-114b, 141b-142b).[1] Fireman Humphries was discharged from the service of the L&N on

[1]The initial citation of the record in each instance refers to the District Court's Findings of Facts. The citations which follow it are references to some of the evidence of record substantiating the Court's Findings.

March 31, 1956, after a hearing on charges of assaulting, on February 15, 1956, two other employees of the L&N who were on duty and on the property of the carrier (135a, 37a, 142b).

On April 11, 1956, General Chairman Jake Paschall of the BLF&E, on behalf of Fireman Humphries, protested the dismissal in a letter to W. S. Scholl, Director of Personnel of the L&N, and demanded that Humphries be restored to service, with former seniority unimpaired, and paid for time lost (136a, 37a, 142b-143b). This grievance was discussed between representatives of the BLF&E and the L&N during several conferences, the last of the conferences at this stage being held on or about June 7, 1957. Because of the seriousness of the offense by Fireman Humphries and his prior unsatisfactory service (114b), L&N refused to reinstate Fireman Humphries (136a, 143b). During these conferences no discussion was had as to whether Humphries had earnings in outside employment or whether, if so, such earnings were to be considered in arriving at the amount of back pay that would be due the claimant should he be reinstated to service (136a, 66a, 32b-34b). Because the L&N would not accede to the demands to reinstate Humphries, the BLF&E threatened to call a strike (136a, 37a, 143b, 209b).

On June 13, 1957, L&N submitted the claim of Fireman Humphries to the Adjustment Board for its decision. The claim was submitted by the L&N to the Adjustment Board in the exact language in which the claim had been submitted to the L&N by the General

Chairman of the BLF&E. The claim, in both instances (136a, 17a, 30b, 91b, 142b-143b), was stated as follows:

> "Request that Fireman B. G. Humphries, Louisville Main Stem First Division, be reinstated to service with former seniority unimpaired and paid for all time lost. Article 31."

The regular members of the Adjustment Board could not agree as to whether this claim of Fireman Humphries should be denied or sustained and a referee was assigned to break the deadlock. On May 14, 1958, the Adjustment Board, with the referee sitting as a member, issued its Award 18720 (136a-137a, 17a-19a, 38a, 30b, 145b) which, based upon a technicality in the investigation, held:

> "Claim sustained with pay for time lost as the rule is construed on the property."

On the same day, an order was entered by the Adjustment Board directing that its Award 18720 be complied with on or before June 14, 1958 (137a, 38a).

The evidence shows without contradiction that the rule referred to in Award 18720 is a part of Article 31 of the agreement between the L&N and the employees represented by the BLF&E, the specific section of the rule being Article 31(f) (137a, 39a, 146b-147b) which provides as follows:

> "If the discipline administered is not sustained, it will be cancelled and the fireman in question will be paid for any time lost by him resulting from the investigation or action taken."

On May 17, 1958, the Director of Personnel of the L&N ordered that Fireman Humphries be restored to the service and he returned to the service of L&N (137a, 38a, 53a, 74b, 145b). On the same date the L&N, following a procedure it had followed in the past in such instances to obtain information for the purpose of deducting outside earnings (137a, 69b-72b, 125b, 144b, 146b, 153b-160b, 210b, 223b, 261b-262b, 264b-265b), requested that Fireman Humphries furnish the carrier with a statement of his earnings in other employment, if any, while out of L&N service (137a, 34b, 73b-75b, 145b, 210b). The General Chairman of the BLF&E was advised of this request by the L&N on the same date (137a, 53a, 145b). The District Court found that, prior to the Humphries case, the L&N, in previous discipline cases, had sought advice as to whether or not there were outside earnings, and that the present General Chairman of the BLF&E had notice that such advice had been sought (147a, 71b-73b, 281b-282b, 287b).

Fireman Humphries failed and refused to furnish the L&N with any statement concerning his earnings in other employment while out of L&N service. The General Chairman of the BLF&E, on May 20, 1958, wrote the L&N's Director of Personnel that, in his opinion, Award 18720 and Article 31(f) of the agreement did not authorize any deduction for earnings in outside employment and demanded that the L&N pay to Fireman Humphries the full amount he would have earned with the L&N without any deduction for earn-

ings in outside employment (138a, 39a, 54a-55a, 146b, 152b).

On June 26, 1958, the Director of Personnel of L&N advised the General Chairman of the BLF&E, in part, as follows (138a, 56a-57a, 60a, 77b, 147b-152b):

> "We have secured from our Accounting Department necessary data for determining what Mr. Humphries would have earned as fireman between March 31, 1956 and May 29, 1958, had he not been discharged, and are ready to discuss with you the money payment due him under Award 18720. But we certainly cannot agree with you that his outside earnings during the time he was out of L&N service should not be deducted."
>
> . . . . . .
>
> "Fireman Humphries has declined to furnish statement of his outside earnings. If and when this is done, we are ready to make whatever money payment may be due him under Award 18720."

Article 31(f), according to L&N's interpretation thereof, requires the L&N to make the employee "whole"; that is, that the employee should be paid his actual loss and that earnings in other employment should be considered in determining the actual loss sustained by the employee. The L&N had in the past obtained information concerning an employee's outside earnings prior to settlement in the few prior cases under this rule and has never paid gross earnings in a case where it had knowledge that the employee being restored to service with pay for time lost had outside employment. L&N's consistent application of the rule

has been to make the employee "whole" (146b-152b, 208b-213b, 222b-229b, 261b-267b, 272b-275b, 277b-286b).

During July, 1958, conferences between representatives of the L&N and of the unions were held concerning the dispute as to the meaning and proper application of Award 18720 (138a, 40a-42a, 152b-157b). The General Chairman of the BLF&E invited the General Chairmen of the BLE, ORC&B and the BRT to attend these conferences (138a, 40a).

Fireman Humphries is a member of the craft or class known on the railroad as "firemen", and he is a member of the BLF&E (139a, 36a-37a). His claim for reinstatement and back pay was submitted to the L&N by the BLF&E (139a, 37a). The BLF&E alone represented Fireman Humphries before the Adjustment Board, where the dispute involved only the provisions of the agreement between the L&N and the employees represented by the BLF&E (139a, 17a-19a, 37a-38a). The BLF&E was the only labor organization that was a party to the dispute before the Adjustment Board in the case involving Award 18720 (139a, 17a-19a, 30b, 145b).

Representatives of the BLE, ORC&B and the BRT were invited to attend the July, 1958, conferences by the General Chairman of the BLF&E (139a, 40a), pursuant to "an agreement of the four Brotherhoods to cooperate in all complaints in respect to the application of awards by the First Division of the National Railroad Adjustment Board" (139a, 23a, 215b).

During these conferences the representatives of the four labor organizations urged that representatives of the L&N, in applying Award 18720, should ignore any outside earnings Fireman Humphries may have had (139a, 41a, 152b, 211b). The L&N representatives contended that, since the BLF&E and the L&N could not agree concerning the proper application of Award 18720, the matter should be referred to the Board for an interpretation pursuant to Section 3 First (m) of the Railway Labor Act (139a, 212b). Such a procedure had been followed by a carrier in a similar dispute, *i. e.*, in a dispute between BRT and the Terminal Railroad Association of St. Louis in Award 11825, First Division of the Board (139a, 212b). The BLF&E was unwilling to seek or join the L&N in seeking an interpretation of Award 18720 from the Board, and contended there was no *bona fide* dispute as to the meaning of the award (139a, 212b). At the conclusion of the conference on July 30, 1958, the L&N was requested to furnish a written statement concerning its position in applying Award 18720 (139a, 152b-153b).

This request was complied with by the L&N by a letter dated August 9, 1958, from the carrier's Director of Personnel to the General Chairman of the BLF&E. This letter (140a, 153b-157b) read, in part:

> "We have complied with that part of AWARD 18720 with respect to restoring Fireman Humphries to the service. We stand ready to comply with the balance of the Award, which we interpret to permit deduction of outside earnings, as soon as Fireman Humphries furnishes the requested

statement showing this information so that the amount due him under the Award may be determined."

During August, 1958, the representatives of the labor organizations commenced taking preliminary steps necessary in order for them to call a strike for the purpose of compelling the L&N to comply with Award 18720 without any deduction of outside earnings (140a, 42a).

On September 28, 1958, the L&N filed with the Board an *ex parte* "Request for Interpretation" of Award 18720, in which it alleged that a dispute existed between the parties involving the proper application of the award in connection with determining the amount due the claimant for time lost. This "Request for Interpretation" set forth the nature of the dispute and requested the Board to clarify its Award 18720 with respect to pay for time lost (140a-141a, 115b-125b, 161b-162b).

The Executive Secretary of the Adjustment Board, by letter dated October 9, 1958, requested the General Chairman of the BLF&E to advise whether or not a dispute existed as to the meaning of Award 18720. The General Chairman, by letter dated November 14, 1958, opposed the carrier's "Request for Interpretation" and advised the Executive Secretary of the Board that ". . . there is no dispute on the part of the Brotherhood of Firemen and Enginemen as to the meaning or intent of Award 18720 . . ." (141a, 66a-67a).

On December 17, 1958, a divided Board, with a referee sitting to break the deadlock, declined to in-

terpret the Award, holding that the question of outside earnings was a new dispute (141a-142a, 68a, 30b, 162b-163b).

A further conference was held on January 23, 1959, between representatives of the L&N and the four labor organizations. Representatives of the labor organizations again demanded that Fireman Humphries be paid wages without any deduction of outside earnings and advised that a strike date would be set if this were not done (142a, 45a, 163b, 212b). L&N representatives declined so to apply the award and suggested that the controversy be resolved by submitting it to the Board as a new dispute (142a, 163b, 212b). On January 23, 1959, representatives of the L&N submitted the controversy *ex parte* to the Adjustment Board as a new dispute for its decision (142a, 45a-46a, 3b-17b, 30b, 163b).

The General Chairmen of the four labor organizations, on February 10, 1959, by a telegram, advised the Director of Personnel of the L&N that employees of those organizations would strike on February 13, 1959, ". . . due to carrier's adamant insistence that outside earnings of Fireman Humphries must be deducted from any money due him under Award 18720" (142a-143a, 21b, 63b-64b, 164b).

On the same date the Director of Personnel was also advised by the unions through the Secretary of the National Mediation Board that the strike was called because of the ". . . refusal of carrier to apply Award 18720 First Division NRAB" (143a, 19b, 61b, 165b).

On December 9, 1959, an equally divided Board, with a referee sitting to break the deadlock, dismissed L&N's submission of the controversy as a new dispute, holding that Award 18720 disposed of the claim of Fireman Humphries for reinstatement and back pay and that "the matter must be judged res judicata" (145a, 69a-72a, 167b).

In accordance with the stipulation of the parties, the District Court found that the carrier would suffer irreparable injury in the event of the strike and that the amount involved exceeded $10,000 exclusive of interest and costs (149a, 28b).

The Court further found that no court enforcement proceeding of Award 18720 had been filed pursuant to the provisions of Section 3 First (p) of the Railway Labor Act (45 U.S.C. Seg. 153 First (p)) (149a, 270b-271b), and that the sole purpose of the threatened strike was to enforce Award 18720, a money award of the First Division, National Railroad Adjustment Board (149a, 24a, 26a, 42a, 19b, 21b, 61b, 64b, 164b-165b, 213b-217b).

The District Court also expressly found that L&N had exercised good faith and was not guilty of bad faith or of coming into Court with "unclean hands" (146a). Further recital of additional findings and pertinent facts concerning this point is reserved for statement in a subsequent part of this brief.[1]

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[1]In both Courts below, Petitioners argued that the L&N was guilty of bad faith in contending that it had the right to consider outside earnings in arriving at the correct amount of back pay due. Both of the Courts below expressly rejected Petitioners' contentions. While Petitioners make no express argument in this Court

(Footnote continued on following page)

Findings of fact shall not be set aside unless clearly erroneous. Rule 52, Federal Rules of Civil Procedure. The findings of fact by the District Court are abundantly supported by the evidence and should not be disturbed.

SUMMARY OF ARGUMENT.

The petition for a writ of certiorari should be denied because the District Court and the Court of Appeals correctly found that the strike was for the purpose of forcing the carrier to pay a money award of the National Railroad Adjustment Board. *Louisville & N. R. Co.* v. *Brotherhood of Locomotive Engineers*, 190 F. Supp. 829, 836, aff'd. 297 F. 2d 608, reh. den. January 17, 1962, and properly held that such a strike was in violation of the Railway Labor Act. *Denver & Rio Grande W. R. Co.* v. *Brotherhood of R. Trainmen*, 290 F. 2d 266 (C. A. 10, 1961), cert. den. 366 U. S. 966, reh. den. 368 U. S. 873.

Two very different types of disputes are encompassed within the provisions of the Railway Labor Act and different remedies are provided for each in the Act. "Major" disputes relate to disputes over the formation of collective bargaining agreements or efforts to secure them. They involve the acquisition of rights for the future, not the assertion of rights claimed to have vested in the past. "Minor" disputes,

---

that the L&N was guilty of bad faith, they have, by several subtle innuendos in their brief, sought to leave this impression. We propose to directly refute such innuendos in a subsequent part of this brief, pp. 42-45, *infra*.

on the other hand, contemplate the existence of a collective bargaining agreement and such disputes involve the meaning or proper application of a particular provision of the agreement to a specific situation. A "minor" dispute involves a claim to rights accrued, not the creation of new rights for the future. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711; *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30. The dispute between the L&N and the BFL&E involving the claim of Fireman Humphries is clearly a minor dispute.

The Railway Labor Act provides a complete statutory plan for the orderly and peaceful settlement of all such minor disputes. Among the expressly stated purposes of the Act are: "(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein"; and ". . . (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions." Sec. 2 (45 U.S.C. Sec. 151a).

If the parties are unable to settle a minor dispute, it may be referred by either party to the National Railroad Adjustment Board created by Section 3 First (i) (45 U.S.C. Sec. 153 First (i)). It is then "considered as compulsory arbitration in this limited field." *Trainmen* v. *Chicago R. & I. R. Co.*, 353 U. S. 30, 39. In Section 3 First (m) (45 U.S.C. Sec. 153 First (m)), it is provided that an award of the Adjustment Board, except insofar as it shall contain a money award, shall be final and binding. Award 18720

of the First Division of that Board is a "money award" which falls within the clearly expressed exception of Section 3 First (m) (45 U.S.C. Sec. 153 First (m)), and does not constitute a "final and binding award."

The Act also expressly provides for additional proceedings for the orderly and peaceful settlement of minor disputes beyond the rendering of the Board's award. In case of a dispute involving an interpretation of the award, either party may request the Board to interpret the award in the light of the dispute. Section 3 First (m) (45 U.S.C. Sec. 153 First (m)). In case of an award favorable to a claimant, the proper Division of the Board shall make an order, directed to the carrier, to make the award effective and, if the payment of money is required, to pay such sum to the employee. Section 3 First (o) (45 U.S.C. Sec. 153 First (o)). If the carrier does not comply with an order, enforcement may be sought in a suit by the union or the employee in a District Court of the United States as provided in Section 3 First (p) (45 U.S.C. Sec. 153 First (p)).

The enforcement suit provided by Section 3 First (p) of the Act is an integral part of the entire statutory plan for the complete and final settlement of such a minor dispute as is the one involved here. The specification of one remedy in the Railway Labor Act normally excludes another. *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297; *Union Pacific R. Co.* v. *Price*, 360 U. S. 601. The existence of the complete statutory scheme for the orderly and

peaceful settlement of such minor disputes cannot realistically be squared with the contention that Congress did not intend to foreclose strikes called for the purpose of enforcing a money award of the Adjustment Board. *Denver & Rio Grande W. R. Co.* v. *Brotherhood of R. Trainmen*, 290 F. 2d 266 (C.A. 10), cert. den. 366 U. S. 966, reh. den. 368 U. S. 873; *cf. Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95. The legislative history and contemporary understanding of the 1934 amendments to the Railway Labor Act support the decisions of the courts below.[1]

The L&N has exhausted its remedies under the Act and is required to take no further steps. In fact, this Court has interpreted Section 3 First (p) as impliedly prohibiting a carrier which had been unsuccessful before the Board from maintaining a suit for a determination of its rights. *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235 (C.A., D.C.), aff'd. by an equally divided Court, 319 U. S. 732.

"The crux of the petitioners' contentions is that they have a common law right to strike to enforce contract claims and, since the Railway Labor Act does not expressly prohibit strikes, no such prohibition may be inferred. This reasoning is unsound in two respects.

First, the right to strike to enforce claims under an existing contract is at least questionable under the common law. *Dorchy* v. *Kansas*, 272 U. S. 306. ". . . To enforce payment by a strike is clearly coercion. . . . Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike."

[1]This is dealt with at pp. 28-34, *infra*.

Ibid., p. 311. None of the cases cited by petitioners involved the question of the right to strike for the purpose of enforcing a money award.

Secondly, petitioners' position that, in the absence of *express* prohibitions, common law rights are unaffected by the Railway Labor Act is simply not true. In a number of different situations the Act has been held, *by implication*, to take away common law rights. Please see, *e.g.*, *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515; *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235 (C.A. D.C.), aff'd. 319 U. S. 732; *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297; *Steele* v. *Louisville & N. R. Co.*, 323 U. S. 192; *Graham* v. *Brotherhood of Locomotive Firemen and Enginemen*, 338 U. S. 232.

More significantly, petitioners must concede that the Railway Labor Act has already been construed in many cases to impliedly prohibit strikes in even major disputes until the remedies provided by the Act have been exhausted. Please see, *e.g.*, *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711, 725; *Brotherhood of Railway and Steamship Clerks* v. *Railroad Retirement Board*, 239 F. 2d 37, 41, 42 (C.A.D.C.); *American Airlines, Inc.* v. *American Air Line Pilots Assn.*, 169 F. Supp. 777, 783-789 (S.D. N.Y.); *Chicago, R. I. & P. R. Co.* v. *Switchmen's Union*, 187 F. Supp. 581 (S.D. N.Y.). This rule does not operate to preclude forever a strike in a major dispute. If the exhaustion of the Act's procedures applicable to major disputes does not lead to a binding settlement, the employees are free to strike unless the parties have agreed to

arbitrate, and such arbitation is specifically made voluntary by the Act. Section 7 (45 U.S.C. Sec. 157).

Most significantly here, despite the absence of any express prohibition against strikes over minor disputes, such strikes have also been held illegal under the Railway Labor Act. *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30; *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, 611-612, n. 10. Exhaustion of the detailed statutory procedures relating to minor disputes leads to a final settlement so that strikes to settle minor disputes are neither necessary nor permissible. *Brotherhood of R. Trainmen* v. *Denver & Rio Grande W. R. Co.*, 290 F. 2d 266, cert. den. 366 U. S. 966, reh. den. 368 U. S. 873. *Cf., Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95.

The Norris-LaGuardia Act (29 U.S.C. Sec. 101, *et seq.*) has not withdrawn the power of federal courts to issue injunctions in labor disputes in all instances. That Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. The District Court properly held that it had jurisdiction to issue necessary injunctive orders to vindicate the processes of the Railway Labor Act. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515, 563; *Brotherhood of R. Trainmen* v. *Howard*, 343 U. S. 768, 774; *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30, 40; *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, 611-612, n. 10).

Petitioners contend that the decisions of the Courts below are in conflict with *Manion* v. *Kansas City Terminal Ry. Co.*, 353 U. S. 927. We do not agree. In *Manion*, a strike had been enjoined although neither the union nor the carrier had initiated the compulsory arbitration processes of Section 3 First. Clearly, the injunctive relief was refused by this Court in *Manion* solely for the reason that, in accord with the age-old, well-established equitable principle, the carrier had an adequate remedy at law, namely, to submit the dispute to the Adjustment Board. The argument of petitioners that a strike is enjoinable only when the jurisdiction of the Adjustment Board has already attached was rejected in *Louisville & N. R. Co.* v. *Brown*, 252 F. 2d 149, 153 (C.A. 5), cert. den. 356 U. S. 949, and *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, 611-612, n. 10.

Five United States District Courts and three United States Courts of Appeals have all stated that a strike to enforce an award of the Adjustment Board is violative of the Railway Labor Act. *Grand Trunk Western R.R. Co.* v. *Railroad Trainmen*, 32 Labor Cases CCH ¶ 70,695 (D.C. Ill.); *Baltimore & Ohio R. Co.* v. *United Railroad Workers*, 176 F. Supp. 53, 58 (D.C. N.Y.); *Atlantic Coast Line R. Co.* v. *System Federation No. 44* (D.C. Tenn.), unreported, but please see the record here (289b-292b); *Denver & Rio Grande W. R. Co.* v. *Brotherhood of R. Trainmen*, 185 F. Supp. 369, 372 (D.C. Colo.); *Louisville & N. R. Co.* v. *Brotherhood of Locomotive Engineers*, 190 F. Supp. 829 (D.C. Ky.); *Chicago River & I. R. Co.* v.

Brotherhood of R. Trainmen, 229 F. 2d 926, 931 (C.A. 7); *Brotherhood of R. Trainmen* v. *Denver & Rio Grande W. R. Co.*, 290 F. 2d 266 (C.A. 10); *Louisville & N. R. Co.* v. *Brotherhood of Locomotive Engineers*, 297 F. 2d 608 (C.A. 6). Not one Court has held otherwise.

The decisions below are correct. No unsettled question of importance is actually presented, and there is no conflict of decisions. Accordingly, a writ of certiorari should not issue.

ARGUMENT.

REASONS FOR DENYING THE WRIT.

The Petition for a Writ of Certiorari Should Be Denied Because the District Court and the Court of Appeals Correctly Interpreted the Railway Labor Act.

The District Court and the Court of Appeals properly held that a strike for the purpose of forcing the carrier to pay a money award of the National Railroad Adjustment Board was in violation of the Railway Labor Act (149a-151a, Petitioners' Appendix, pp. 17-20, 24-26).

The precise question involved here was decided in *Denver & Rio Grande W. R. Co.* v. *Brotherhood of R. Trainmen*, 185 F. Supp. 369 (D.C. Colo., 1960). The judgment of the District Court was appealed to the Court of Appeals for the Tenth Circuit and was affirmed by the Court of Appeals. *Brotherhood of R. Trainmen* v. *Denver & Rio Grande W. R. Co.*, 290 F. 2d 266 (1961). This Court denied a petition for a

writ of certiorari on June 19, 1961. *Ibid.*, 366 U. S. 966. And on October 9, 1961, it denied a petition for rehearing. *Ibid.*, 368 U. S. 873.

This Court has often recognized that two very different types of disputes are encompassed within the provisions of the Railway Labor Act. In *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711, this Court made a clear distinction between "major" and "minor" disputes and the different remedies provided for each in the Railway Labor Act.

"Major" disputes relate to disputes over the formation of collective bargaining agreements or efforts to secure them. They involve the acquisition of rights for the future, not the assertion of rights claimed to have vested in the past. "Minor" disputes, on the other hand, contemplate the existence of a collective bargaining agreement, and such disputes involve the meaning or proper application of a particular provision of an agreement to a specific situation, generally involving only one employee. A "minor" dispute involves a claim to rights accrued, not the creation of new rights for the future. *Elgin, J. & E. Ry. Co.* v. *Burley*, 325 U. S. 711, 722-723; *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30, 33. Petitioners' brief blurs the distinction between these two different types of disputes and the remedies provided for each in the Railway Labor Act.

Congress, in enacting the Railway Labor Act of 1934, sought "to provide for the prompt and orderly settlement" of both major and minor disputes in order ". . . to avoid any interruption to commerce or to

the operation of any carrier." Section 2(1), (4) and (5). Congress was aware that the problems involved in resolving the two kinds of disputes are different and require different treatment. Minor disputes involving the interpretation of an existing agreement can be settled peacefully by methods analogous to long established judicial procedures for construing and enforcing contracts. Major disputes, however, cannot readily be handled in this manner. A Court or administrative tribunal cannot, for example, readily decide, by looking to the terms of an existing document or to past practice, whether or not an increase in future rates of pay is justified. No Court or agency is empowered to decide the dispute by making an agreement for the parties. Therefore, Congress created distinctive procedures for dealing with the two different types of disputes.

Concerning major disputes, the Supreme Court, in *Elgin, J. & E. Ry. Co.* v. *Burley, supra*, stated (p. 275):

> "The parties are required to submit to the successive procedures designed to induce agreement. Section 5 First (b). But compulsions go only to insure that those procedures are exhausted before resort can be had to self-help. No authority is empowered to decide the dispute, and no such power is intended unless the parties themselves agree to arbitration."

In major disputes either of the parties may invoke the services of the National Mediation Board, which "shall use its best efforts, by mediation, to bring them to agreement". Section 5 First (45 U.S.C. Sec. 155

First). If mediation is unsuccessful and a serious strike is threatened, the President can appoint an Emergency Board, which "shall investigate promptly the facts as to the dispute and make a report thereon to the President." Section 10 (45 U.S.C. Sec. 160). The Act has been construed to prevent strikes during this entire period. However, neither the Mediation Board nor the Emergency Board can impose upon the parties a binding settlement of a major dispute. The parties, by mutual agreement, can refer a major dispute to a Board of Arbitration pursuant to Section 7 (45 U.S.C. Sec. 157). This section clearly provides that "the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise". Thus, the procedures relating to major disputes were made either voluntary or not finally determinative.

With regard to minor disputes, on the other hand, the Railway Labor Act provides entirely different procedures. Speaking of minor disputes, in *Elgin, J. & E. Ry. Co.* v. *Burley, supra*, this Court stated:

> "The course prescribed for the settlement of grievances is very different beyond the initial stage [of negotiation]. Thereafter, the Act does not leave the parties fully free, at their own will, to agree or not to agree." (p. 725).
>
> . . . . . .
>
> "The procedure adopted is not one of mediation and conciliation only, like that provided for major disputes under the auspices of the Mediation Board."

A separate agency, the National Railroad Adjustment Board, is created by Section 3 First (45 U.S.C. Sec. 153 First). If the parties are unable to settle a minor dispute, it may be referred by either party to the Adjustment Board. Section 3 First (i) (45 U.S.C. Sec. 153 First (i)). In Section 3 First (m) (45 U.S.C. Sec. 153 First (m)), it is provided that an award of the Adjustment Board, except insofar as it shall contain a money award, shall be final and binding. Award 18720 of the First Division of the Adjustment Board is a "money award" which falls within the clearly expressed exception of Section 3 First (m) (45 U.S.C. Sec. 153 First (m)), and does not constitute a "final and binding award".

The Act also expressly provides for additional proceedings for the orderly and peaceful settlement of minor disputes beyond the rendering of the Board's award. In case of a dispute involving an interpretation of the award either party may request the Board to interpret the award in the light of the dispute. Section 3 First (m) (45 U.S.C. Sec. 153 First (m)). In case of an award favorable to a claimant, the proper Division of the Board shall make an order, directed to the carrier, to make the award effective and, if the payment of money is required, to pay such sum to the employee. Section 3 First (o) (45 U.S.C. Sec. 153 First (o)). If the carrier does not comply with an order, enforcement may be sought in a suit by the union or the employee—here, the BLF&E or Humphries—in a District Court of the United States as

provided in Section 3 First (p) (45 U.S.C. Sec. 153 First (p)).

The specification of one remedy in the Railway Labor Act normally excludes another. *Switchmen's Union of N.A. v. National Mediation Board*, 320 U. S. 297; *Union Pacific R. Co. v. Price*, 360 U. S. 601. The enforcement suit provided by Section 3 First (p) of the Act is an integral part of the entire statutory plan for the complete and final settlement of such a minor dispute as is the one involved here.

The existence of the complete statutory scheme for the orderly and peaceful settlement of such minor disputes cannot realistically be squared with the contention that Congress did not purpose to foreclose strikes, such as the one involved here, called for the purpose of enforcing a money award of the National Railroad Adjustment Board. *Denver & Rio Grande W. R. Co. v. Brotherhood of R. Trainmen*, 290 F. 2d 266 (C.A. 10), cert. den. 366 U. S. 966, reh. den. 368 U. S. 873.

Under the provisions of Section 3 First (p) of the Act, the petitioner, or the person for whose benefit such award was made, may bring an action in the United States District Court for the district in which he resides or in which the carrier is located or through which the carrier operates. The Act sets forth that the suit in the District Court shall proceed in all respects as other civil suits and that the findings and order of the Board shall be *prima facie* evidence of the facts therein stated. It is further provided that the petitioner is not liable for costs and that such costs

shall be paid out of the appropriation for expenses of the Courts of the United States. If the petitioner prevails, he is allowed a reasonable attorney's fee to be taxed and collected as part of the costs of the suit. Thus, the Act clearly provides a complete method for the final settlement of minor grievances and such exclusive method is the only way that awards can be enforced.

The district courts are given power to enter orders appropriate "to enforce or set aside" awards of the Board, and courts have refused to enforce erroneous orders of the Board and their power to do so is unquestioned. *Boos* v. *Railway Express Agency*, 253 F. 2d 896 (C.A. 8); *Thomas* v. *New York, Chicago & St. Louis R. Co.*, 185 F. 2d 614 (C.A. 6); *Dahlberg* v. *Pittsburgh & L. E. R. Co.*, 138 F. 2d 121 (C.A. 3); *Brotherhood of Railway Clerks* v. *Atlantic Coast Line R. Co.*, 253 F. 2d 753 (C.A. 4). This fact may persuade unions which have obtained highly questionable awards to attempt to enforce them by strikes rather than by an enforcement suit in which the award is subject to judicial scrutiny. In fact, in view of the liberal provisions of Section 3 First (p), a desire to avoid judicial review would seem to be the only reason a union would call a strike to enforce an Adjustment Board award. The expenses of litigation afford no reason for by-passing the court since the Act allows a recovery of an attorney's fee and costs are paid by the Government. Thus, the only apparent reason for a strike to enforce an award—that of preventing judicial review—is not a legitimate one.

The L&N has exhausted its remedies under the Act and is required to take no further steps. Indeed, the Supreme Court interpreted Section 3 First (p) as impliedly prohibiting a carrier, which had been unsuccessful before the Adjustment Board, from maintaining a suit for a determination of its rights. *Washington Terminal Co.* v. *Boswell,* 124 F. 2d 235 (C.A., D.C.), affirmed by an equally divided Court, 319 U. S. 732.

All of the provisions of the Railway Labor Act, considered above, manifest a clear Congressional intent that the enforcement suit provided by Section 3 First (p) of the Act (45 U.S.C. Sec. 153 First (p)) is an integral part of the entire statutory plan for the complete and final settlement of such a minor dispute as is involved here. The threatened strike—not only is repugnant to the expressly stated purposes of the Act (45 U.S.C. Sec. 151a)—but, and this is of primary significance, it is a flagrant disregard by the unions of the remedy specifically provided to them by Congress to preclude such a strike.

The Decisions of the District Court and the Court of Appeals Are Supported by Legislative History and Contemporary Understanding of the Railway Labor Act.

The legislative history and contemporary understanding of the 1934 amendments to the Railway Labor Act support the decisions of the Courts below. As was stated in the House report:

> "The second major purpose of the bill is to provide sufficient and effective means for the set-

tlement of minor disputes known as grievances which develop from the interpretation and or application of the contracts between the labor unions and the carriers. . . . These unadjusted disputes have become so numerous that on several occasions the employees have resorted to the issuance of strike ballots and threatened to interrupt interstate commerce in order to secure an adjustment. . . . This condition should be corrected in the interest of industrial peace and uninterrupted transportation service." (H.R. Rep. No. 1944, 73d Cong., 2d Sess., pp. 2-3).

Among other things, the 1934 amendments added Section 3 First (p) which made Adjustment Board awards enforceable in court. This remedy was not contained in the Railway Labor Act of 1926. When questioned about the right to strike after a decision by the Adjustment Board, Commissioner Joseph B. Eastman, Federal Coordinator of Transportation, stated:

". . . there ought not to be strikes with reference to minor grievances of that sort. I should be very unwilling to take away from the employees the right to strike on major issues, but these are not major issues." (Hearings before the House Committee on Interstate and Foreign Commerce on H.R. 7650, 73d Cong., 2d Sess., p. 61).

The following answer was made by Commissioner Eastman to this question by Congressman Pettingill:

"Mr. Pettingill: Your interpretation there, Mr. Commissioner would be that under the lan-

guage at the bottom of page 17, although the individual may be free to walk out, the organization would not be free to call a strike after an award had been made on these matters that are covered by the language at the bottom of page 17.

"Commissioner Eastman: Well, that is my understanding; yes, sir." (House Hearings, p. 59).

Mr. Carmalt, Legal Advisor to Commissioner Eastman, specifically advised the Committee that the implication lay, from the form of the bill, that a strike on account of minor grievances would not be permitted and could be enjoined. Mr. Carmalt testified during the same Congressional hearings on the 1934 amendments as follows:

"Mr. Wolverton: Is it your opinion that there should be such a provision in the bill or not?

. . . . . .

"Mr. Carmalt: My opinion is that there should not be the right to strike over grievances of this kind where the Government has provided the machinery whereby the grievances may be considered by an impartial board."

"Mr. Wolverton: Do you think that the language that has been referred to by Mr. Eastman, as conferring this absolution, so to speak, so far as an employee is concerned, would provide equal protection to the organization itself?

"Mr. Carmalt: No, I think this injunction would run, rather as against a strike. There is no other means of resisting the order. But, as to the individual quitting, I think the absolution would be effective.

"Mr. Wolverton: Do you think that the absolution that has been given the employee should likewise be given to the organization?

"Mr. Carmalt: Oh no.

"Mr. Wolverton: What?

"Mr. Carmalt: No.

"Mr. Wolverton: What did you say?

"Mr. Carmalt: No. The employees, in their drafting of the bill, put that absolution in and in redrafting the bill we took the language of the present act which would not give that absolution to the organization.

"Mr. Wolverton: *So then you assume that under the provision of this bill an injunction could issue to prevent an organization from going on strike?*

"Mr. Carmalt: *Such an injunction process as might be necessary to prevent the strike growing out of the settlement of grievances under Section 3, I should believe would lie.*

"Mr. Wolverton: Then the bill has been drawn purposely so that it would have that effect, so far as the organization is concerned but not so far as the individual is concerned?

"Mr. Carmalt: I would not say that it gives any authority in that regard, because it was assumed that would be true, but there has been no discussion of it until this morning." (Emphasis added; pp. 62-63.).

We submit that the Congressional Record defeats appellants' argument here made. The Committee was advised that the language used in the amendments

would justify the injunction. This fact was brought to the attention of Congress. By allowing the amendments to remain in this form, it is evident that the congressional intent was to prohibit such strikes by means of an injunction. Certainly, the Supreme Court in the *Chicago River* case, *supra,* interpreted similar language in the congressional hearings the same way.

In the Senate Hearings on the proposed amendments, Mr. George Harrison, President of the Brotherhood of Railway Clerks, was the leading spokesman for labor. He stated:

> "These railway labor organizations have always opposed compulsory determination of their controversies. We have lived a long time and got a lot of experience and we know that these minor cases that develop out of contracts that we make freely, and which we have the right and privilege of entering into and have something to say about their terms we are now ready to go to a board and get them determined and that is a contribution that these organizations are willing to make." (Hearings before the Senate Committee on Interstate and Foreign Commerce on S. 3266, 73d Cong., 2d Sess., p. 35).

The representative of the International Brotherhood of Teamsters had vehemently objected in the Hearings before the House of Representatives to the adoption of Section 3 First, and stated:

> "We are unalterably opposed to paragraph M, . . . [which] brings about compulsory arbitration and prevents the use of the only weapon in

the hands of organized labor. We believe that a very dangerous precedent would be established with the passage of this paragraph, and to the best of our knowledge it is the first time that any such measure has been enacted by the Congress of the United States." (House Hearings, p. 118).

The understanding of the railway labor organizations in 1934, when the amendments were passed, is further shown by an article written by George Harrison in the October 1934 issue of the American Federationist. Mr. Harrison pointed out that under the new law, Adjustment Board awards were enforceable in court:

"The power to enforce decisions of the National Board of Adjustment has been criticized by some on the ground that it constitutes compulsory arbitration. This is denied by the railway labor organizations, who point out that the National Board of Adjustment has jurisdiction only over grievances that arise out of the application and interpretation of rules. The settlement of such grievances and the enforcement of decisions of the adjustment board is merely applying the judicial process to the adjudication of grievances. The fundamental proposition of *changes* in wages, hours and working conditions is still a matter of direct negotiation between the carriers and the unions representing the employees. The mediation and arbitration provisions of the original Railroad Labor Act remain intact and arbitration in these matters is purely voluntary." (p. 1057) (Italics in original).

If Sections 3 First (i) and (p) were intended to be merely voluntary remedies which the unions could ignore, Mr. Harrison would have so stated in answer to the criticism of compulsory arbitration. Instead, he defended these provisions by saying that they applied only to minor disputes: that enforcement of decisions of the Adjustment Board is merely applying the judicial process to the adjudication of minor disputes; but that arbitration of *major disputes* was still "purely voluntary". Mr. Harrison appeared at both the Senate and the House hearings on the 1934 amendments as Chairman of the legislative committee of the Railway Labor Executives' Association.

On page 14 of their petition, petitioners refer to the Donnell Bill which was before Congress in 1950 and which was supported by railroads but opposed by the unions. Had that bill been passed by Congress it would have given any party—the railroad or its employees—aggrieved by an unfavorable award of the Adjustment Board the right to have the award reviewed by a Federal Court. It would also have provided for the report of Emergency Boards to be conclusive and binding upon the parties. Thus the Donnell Bill would have provided for the peaceful determination of *all* disputes—both major and minor.

Petitioners' Strict Construction of the Railway Labor Act Would Defeat the Purpose and Overall Statutory Scheme of the Act for the Final Settlement of Minor Disputes.

The crux of the petitioners' contentions is that they have a common law right to strike to enforce contract claims and, since the Railway Labor Act does not expressly prohibit strikes, no such prohibition may be inferred.

This reasoning is unsound in two respects. First, the right to strike to enforce claims under a contract is at least questionable under the common law. In discussing a strike brought to enforce a claim under a collective bargaining agreement, Mr. Justice Brandeis, speaking for a unanimous Court in *Dorchy* v. *Kansas*, 272 U. S. 306, stated (p. 311):

> ". . . . a strike may be illegal because of its purpose, however orderly the manner in which it is conducted. To collect a stale claim due to a fellow member of the union who was formerly employed in the business is not a permissible purpose. In the absence of a valid agreement to the contrary, each party to a disputed claim may insist that it be determined only by a court. Compare *Guaranty Trust Co.* v. *Green Cove R.R.*, 139 U. S. 137, 143; *Red Cross Line* v. *Atlantic Fruit Co.*, 264 U. S. 109. To enforce payment by a strike is clearly coercion. . . . Neither the common law, nor the Fourteenth Amendment, confers the absolute right to strike. Compare *Aikens* v. *Wisconsin*, 195 U. S. 194, 204-5."

In support of their argument that they have such a common law right to strike, petitioners cite *American Steel Foundries* v. *Tri-City Trades Council*, 257 U. S. 184; *N.L.R.B.* v. *Jones & Laughlin Steel Corp.*, 301 U. S. 1; *Republic Steel Corp.* v. *N.L.R.B.*, 311 U. S. 7; *Dodge Corp.* v. *N.L.R.B.*, 313 U. S. 177; *Brooklyn Savings Bank* v. *O'Neil*, 324 U. S. 697; *Carpenters' Union* v. *N.L.R.B.*, 357 U. S. 93; *Teamsters Union* v. *Oliver*, 358 U. S. 283 and *Union Pacific R.R. Co.* v. *Price*, 360 U. S. 601. None of these cases involved the question of the right to strike for the purpose of forcing the payment of a claim under an existing contract or for the purpose of enforcing a money award. It is anomalous that all of the above cases except the *O'Neil*, *Oliver* and *Price* cases were statutory proceedings for the enforcement of orders of the National Labor Relations Board. The *O'Neil* case was a statutory proceeding under Section 16(b) of the Fair Labor Standards Act to enforce the provisions of that Act. The *Oliver* case involved the question whether an Ohio antitrust statute could nullify a provision of a collective bargaining agreement made pursuant to the National Labor Relations Act.

Petitioners can find even less support for their position in the *Price* case for there this Court interpreted the Railway Labor Act as *impliedly* prohibiting strikes by employees over unfavorable awards of the Adjustment Board (pp. 611-612, n. 10).

Petitioners' argument that, in the absence of express prohibitions, common law rights are unaffected by the Railway Labor Act is simply not true. In a

number of different situations the Railway Labor Act has been held, *by implication*, to take away common law rights. A few examples will reveal the basic error in petitioners' contentions. The Act was held to prohibit, *by implication*, all negotiations by a carrier with anyone other than the representative designated by the National Mediation Board. *Virginian Railway Co.* v. *System Federation No. 40*, 300 U. S. 515. The Act *impliedly* prohibits a carrier from instituting an action for a declaratory judgment as to the validity of an award of the Adjustment Board. *Washington Terminal Co.* v. *Boswell*, 124 F. 2d 235 (C.A. D.C. 1941), affirmed by an equally divided Court, 319 U. S. 732. Judicial review of decisions of the National Mediation Board has also been held to be forbidden despite the absence of any express provision to that effect. *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297. The Act impliedly proscribes the unions from engaging in discrimination on the basis of race. *Steele* v. *Louisville & N.R. Co.*, 323 U. S. 192; *Graham* v. *Brotherhood of Locomotive Firemen & Enginemen*, 338 U. S. 232.

Even of more significance, the petitioners must concede that the Railway Labor Act has been construed in many cases to prevent strikes until the remedies provided by the Act have been exhausted. Please see, *e. g.*, *Elgin, Joliet & Eastern Ry. Co.* v. *Burley*, 325 U. S. 711, 725; *Brotherhood of Railway and Steampship Clerks* v. *Railroad Retirement Board*, 239 F. 2d 37, 41, 42 (C.A. D.C.); *American Airlines, Inc.* v. *American Air Lines Pilots Assn.*, 169 F. Supp. 777, 783-789

(S.D. N.Y.); *Chicago, R. I. & P. R. Co.* v. *Switchmen's Union*, 187 F. Supp. 581 (S.D. N.Y.). These are cases involving "major disputes". And, most significantly here, despite the absence of an express prohibition against strikes over "minor disputes", these have also been held illegal under the Railway Labor Act. *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30. As recent as 1959 in *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, this Court stated (pp. 611-612, n. 10):

> "If an unfavorable award results in a strike the carrier may obtain injunctive relief. Railroad Trainmen v. Chicago River & I. R. Co., 353 U. S. 30; see also Hearings before House Committee on Interstate and Foreign Commerce on H.R. 7650, 73d Cong., 2d Sess., pp. 58-65."

Thus, the Railway Labor Act has often been construed to prohibit strikes upon the basis of an implied prohibition. Far from giving a strict or narrow construction to the Act, courts have frequently applied it broadly in order to fulfill the statutory purpose, even in the absence of express language and even if such a construction abridged common law rights of the carrier or the union.

We submit that there is one general rule applicable to both major and minor disputes: The parties must exhaust the remedies provided by the Act before resorting to self-help. *Elgin, J. & E. R. Co.* v. *Burley*, 325 U. S. 711, 725; *Norfolk & Portsmouth Belt Line R. Co.* v. *Brotherhood of R. Trainmen*, 248 F. 2d 34,

45 (C.A. 4), cert. den. 355 U. S. 914; *Chicago, R.I. & P. R. Co.* v. *Switchmen's Union,* 187 F. Supp. 581 (S.D. N.Y.); *American Air Lines, Inc.* v. *American Air Line Pilots' Ass'n.,* 169 F. Supp. 777, 783-789 (S.D. N.Y.); *Pennsylvania R. Co.* v. *Local 2013 of United R. Wkrs., etc.,* 178 F. Supp. 53, 61 (E.D. Pa.); *Baltimore & Ohio R. Co.* v. *United Railroad Wkrs., etc.,* 176 F. Supp. 53, 58 (S.D. N.Y.). This rule does not always preclude a strike in a major dispute because, as we have seen, exhaustion of the Railway Labor Act's procedures applicable to major disputes does not lead to a binding settlement, unless the parties agree to arbitrate, and arbitration is specifically made voluntary by the Act. Sec. 7 (45 U.S.C. Sec. 157); *Trainmen* v. *Toledo, P. & W. R. Co.,* 321 U. S. 50, 62-63. On the other hand, in minor disputes, where a procedure for a final decision is provided, strikes are illegal. Exhaustion of the detailed statutory procedures relating to minor disputes leads to a final settlement, so that a strike to settle minor disputes is neither necessary nor permissible.

Washington Terminal Co. v. *Boswell,* 124 F. 2d 235 (C.A., D.C.), affirmed by an equally divided Court, 319 U. S. 732, does not support petitioners. The question in that case, as stated in 124 F. 2d at p. 239, was whether a carrier, which had been unsuccessful before the Adjustment Board, could maintain a suit under the Declaratory Judgment Act for a determination of its rights under the agreement during the time that the Railway Labor Act allowed the union or the employee to file an enforcement suit under Section 3 First (p)

(45 U.S.C. Sec. 153 First (p)). *The Court specifically pointed out, at p. 247, that the question of whether or not a strike to enforce an award is lawful was not before the Court.* The Court of Appeals held that the carrier's suit for a declaratory judgment was impliedly prohibited by the Railway Labor Act because it defeated the plan set forth in that Act for a judicial determination under Section 3 First (p). The Court further stated (p. 240):

> "The entire statutory process has three distinct and primary stages: (1) direct negotiation between the disputants; (2) administrative determination; (3) judicial enforcement. While these are distinct, they are not independent. Each is related to the others as links in a chain or successive steps in a stairway leading to decision. . . ."

It is clear from the language of *Washington Terminal Co.* v. *Boswell, supra,* that the judicial enforcement provision of Section 3 First (p) of the Railway Labor Act is an integral part of the complete scheme for the final determination of minor disputes.

It is true that the Act does not command or compel the filing of an enforcement suit, and, in this sense, the provisions of Section 3 First (p) are voluntary. The "compulsions go only to insure that those procedures are exhausted before resort can be had to self-help". *Elgin, J. & E. R. Co.* v. *Burley, supra.* Section 3 First (p) is such a remedy specifically provided for the kind of dispute involved here over compliance with an award of the Adjustment Board. The enforcement

machinery of Section 3 First (p) was selected by Congress in 1934 as an appropriate and fair substitute for strikes to enforce awards.

Petitioners also cite *Brotherhood of R. Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50; *Chicago, Rock Island & Pac. R. Co.* v. *Switchmen's Union*, 187 F. Supp. 581, 292 F. 2d 61 and *Elgin, J. & E. Ry. Co.* v. *Brotherhood of R. Trainmen*, 196 F. Supp. 158. None of these cases supports petitioners' position here. They all involved major disputes and, thus, they are clearly inapposite here.

N.L.R.B. v. *Insurance Agents' Int. Union*, 361 U. S. 477, also relied on by petitioners, involved the legality of union tactics under Sec. 8(b)(3) of the National Labor Relations Act during the period of collective bargaining for the making of a new agreement and did not involve a dispute over the proper interpretation of an existing agreement. Nothing is contained in the decisions of the Courts below which even purports to restrict petitioners' claimed right to bargain collectively or to strike in connection with the making of new agreements. But a carrier should not be required to succumb to the union's interpretation of an existing agreement, especially where, as here, there is a detailed statutory plan for peaceful and final settlement of such a minor dispute. *Cf. Teamsters Local* v. *Lucas Flour Co.*, 369 U. S. 95, where this Court stated:

> ". . . In a consistent course of decisions the Court of Appeals of at least five Federal Circuits have held that a strike to settle a dispute which a collective bargaining agreement provides shall be

> settled exclusively and finally by compulsory arbitration constitutes a violation of the agreement. . . ., To hold otherwise would obviously do violence to accepted principles of traditional contract law. Even more in point, a contrary view would be completely at odds with the basic policy of national labor legislation to promote the arbitral process as a substitute for economic warfare. . . ." (p. 105).

The National Mediation Board also recognizes the importance and necessity for adjudication of such minor disputes, for it has stated:

> "Where agreements cover the questions in dispute, there is no need for mediation because the issues were intended to be settled by the agreements. To mediate or to compromise such questions may have the effect of modifying or setting aside what was agreed upon. Therefore, such disputes require adjudication just as business contracts often have to be adjudicated in the courts." National Mediation Board, "Administration of the Railway Labor Act, 1934-1957", p. 41.

In the petitioners' statement of the case (Pet., p. 6) it is asserted that in 1945 and in 1947 the L&N unsuccessfully sought to amend Article 31(f) of its agreements with employees of the operating crafts so as to authorize the deduction of outside earnings. The intended implication, of course, is that the L&N has admitted that such existing agreements do no authorize any deduction for outside earnings. The implication is without factual basis, and L&N so demonstrated by

proof of the pertinent details concerning these rules proposals (222b-256b, 261b-270b, 272b-277b). L&N showed that the 1945 and 1947 rules proposals of both the carriers and the unions were prepared and formulated, not on a carrier basis (that is, applicable only to a single carrier, such as L&N), but on what is known in the industry as a national basis. Petitioners need not speculate as to the purpose of the railroads in serving the 1945 and 1947 notices, for the record here clearly shows the purpose: The major railroads of the country, including the L&N, that were parties to these national cases were simply seeking to obtain a uniform rule that could not possibly be subject to any misinterpretation on the subject of outside earnings (222b-256b, 261b-270b, 272b-277b). This purpose was explicitly stated by the carriers' witness, C. D. Mackay, in his sworn testimony during the hearing before the Presidential Emergency Board (226b-227b, 232b-251b).

A Section 6 notice[1] may be served by a carrier to confirm its alleged unilateral authority under an existing agreement, and in cases where this has been done, it has been held that the mere serving of such a notice does not alter the rights of the parties under the existing agreement nor estop a carrier from withdrawing such notice and relying upon the existing agreement. In Re *Hudson and Manhattan Railroad Co.*, 172 F. Supp. 329, affirmed sub nom. *Stiellman, etc.* v. *General*

[1]So-called in the railroad industry. The reference is to Section 6 of the Railway Labor Act, 45 U.S.C. Sec. 156, which provides that a party wishing to change a collective bargaining agreement subject to the Railway Labor Act shall serve notice on the other party to the Agreement.

Grievance Committee, 267 F. 2d 941 (C.A. 2), cert. den. 363 U. S. 843; *Rutland Ry. Corp. v. Brotherhood of Loco. Eng.*, 188 F. Supp. 721 (D.C. Vt.).

Certainly no admission by the L&N that existing rules prohibit deduction of outside earnings can be implied by the proposals in the 1945 and 1947 National Rules Cases. The First Division of the Adjustment Board has rejected such arguments as petitioners imply here (256b).

Moreover, petitioners' inference on this point is completely shattered by proof that, prior to the 1945 and 1947 National Rules Cases, L&N's position on the subject concerning the proper interpretation of such rules was precisely the same as it presently is and has always been (261b-270b).

As is evident from the record in this case, there have been very few cases in which the L&N has encountered the problem of having to reinstate employees who have been discharged. In none of these cases, however, has the L&N interpreted or applied Article 31(f) other than as a contractual obligation to make the employee "whole". There has never been any understanding or agreement, either written or oral, between the L&N and the BFL&E, or any of its predecessors, that Article 31(f) should be construed or interpreted in actual practice on the property as not authorizing the deduction of outside earnings in such cases.

The District Court stated (147a):

> "L&N has shown that its opinion of a right to deduct outside earnings was not a frivolous one

nor 'a wilful and perverse attempt to evade and violate the provision of Article 31 (f)' as contended by the defendants. The various opinions of the Adjustment Board, and the opinion of the Kentucky Court of Appeals in the Wells case (L&N v. Wells, 289 Ky. 700, 160 S. W. 2d 16) justified L&N's opinion. The record further shows that in previous discipline cases involving the defendant organizations, L&N has sought advice as to whether or not there were outside earnings, and the present General Chairman of the BLF&E had notice that such advice was sought."

Petitioners contend that, if the exclusive remedy to enforce Adjustment Board awards is that provided by Section 3 First (p) of the Act, only the carrier would be entitled to judicial review of unfavorable awards. We invite further attention to *Union Pacific R. Co. v. Price*, 360 U. S. 601, where this Court stated:

"Despite the conclusion compelled by the overall scheme of the Railway Labor Act and its legislative history, it is suggested that because an enforcement proceeding against a non-complying carrier under § 3 First (p) affords the defeated carrier some opportunity to relitigate the issues decided by the Adjustment Board, unfairness results if § 3 First (m) is construed so as to deny the employee the right to maintain this common-law action. . . . The disparity in judicial review of Adjustment Board orders, if it can be said to be unfair at all, was explicitly created by Congress, and it is for Congress to say whether it ought be removed.

"Plainly the statutory scheme as revised by the 1934 amendments was designed for effective and final decision of grievances which arise daily, principally as matters of the administration and application of the provisions of collective bargaining agreements. This grist of labor relations is such that the statutory scheme cannot realistically be squared with the contention that Congress did not purpose to foreclose litigation in the courts over grievances submitted to and disposed of by the Board, past the action under § 3 First (p) authorized against the noncomplying carrier, see *Washington Terminal Co.* v. *Boswell,* 75 U. S. App DC 1, 124 F. 2d 235, aff'd by an equally divided Court, 319 U. S. 732, or the review sought of an award claimed to result from a denial of due process of law, see *Ellerd* v. *Southern Pacific R. Co.,* 241 F. 2d 541; *Barnett* v. *Pennsylvania-Reading Seashore Lines,* 245 F. 2d 579, 582. So far as appears, all of the Courts of Appeals, and District Courts which have dealt with this problem have reached the conclusion we reach here. . . ." (pp. 614-617).

Petitioners have included the Norris-LaGuardia Act (29 U.S.C. Sec. 101, *et seq.*) in that part of their petition listing the "statutes involved" in this case, as well as mentioning in their "statement of the case" that the contention was made in the District Court that the injunction was prohibited by the Norris-LaGuardia Act. However, for some unexplained reason, the applicability of that Act is not included in their "questions presented for review" nor is that Act mentioned at any other place than that referred to above. Since

the Norris-LaGuardia Act is one regarding jurisdiction, we feel some mention should be made regarding it.

By its findings 11-13 of its Conclusions of Law (Petitioners' Appendix, pp. 19-20), the Trial Court found that the Norris-LaGuardia Act has not withdrawn jurisdiction of federal courts in this case. It properly relied upon the case of *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30, 40, wherein this Court held:

> "We hold that the Norris-LaGuardia Act cannot be read alone in matters dealing with railway labor disputes. There must be an accommodation of that statute and the Railway Labor Act so that the obvious purpose in the enactment of each is preserved. We think that the purposes of these Acts are reconcilable."

In the case of *Brotherhood of Railroad Trainmen* v. *Howard*, 343 U. S. 768, 774, this Court stated:

> "Our conclusion is that the District Court has jurisdiction and power to issue necessary injunctive orders [to enforce compliance with the requirements of the Railway Labor Act] notwithstanding the provisions of the Norris-LaGuardia Act."

And, again, in the case of *Virginian Railway Co.* v. *System Federation*, 300 U. S. 515, 563, the Court held:

> "It suffices to say that the Norris-LaGuardia Act can affect the present decree only so far as its provisions are found not to conflict with those of § 2, Ninth, of the Railway Labor Act, authorizing

> the relief which has been granted. Such provisions cannot be rendered nugatory by the earlier and more general provisions of the Norris-LaGuardia Act."

We do not see how the Norris-LaGuardia Act could apply in this case when Congressman LaGuardia himself, who was co-author and sponsor of that Act, and undoubtedly no enemy of labor, stated:

> "There is the tie-up between the provisions of the railroad labor act and the necessity of exhausting every remedy to adjust any difference which might arise. The *workers could not* and would not think of going on strike before all the remedies provided in the law have been exhausted." (75 Cong. Rec. 5504). (Emphasis added).

The Decisions of the Court of Appeals and the District Court Are Not in Conflict With Applicable Decisions of this Court or the Courts of Appeals of Other Circuits.

Petitioners claim that the decision of the Court of Appeals of the Sixth Circuit is in conflict with applicable decisions of this Court. To support that contention they rely upon one case; namely, *Manion* v. *Kansas City Terminal Ry. Co.*, 353 U. S. 927. Such reliance is misplaced.

That *per curiam* opinion was not decided upon anything that the Kansas Court had said, for this Court specifically stated that its decision rested upon its earlier decision in the case of *Brotherhood of R. Trainmen* v. *Chicago River & I. R. Co.*, 353 U. S. 30. In

the *Chicago River* case this Court unanimously held that a strike could be enjoined during the pendency of a dispute before the National Railroad Adjustment Board. Clearly, equitable injunctive relief was refused in *Manion* solely for the reason that the railroad had an adequate administrative remedy, namely, to submit the dispute to the National Railroad Adjustment Board, which it had not exhausted. *Cf. Trainmen* v. *Toledo, P. & W. R. Co.*, 321 U. S. 50.

Petitioners have quoted from the opinion of the lower court in the *Manion* case (*Kansas City Terminal Railway Co.* v. *Manion*, Mo., 297 S. W. 2d 31). There the Court had erroneously held: "it is abundantly clear that Terminal is without adequate remedy at law." (p. 38). This Court remanded the *Manion* case "without prejudice to the power of the Court of Appeals to reinstate its judgment if the dispute is submitted to the Adjustment Board by either party within a reasonable time."

L&N's interpretation of *Manion* is supported by the case of *Louisville & N. R. Co.* v. *Brown*, 252 F. 2d 149 (C.A. 5), cert. den. 356 U. S. 949. In the *Brown* case a strike was called over a minor dispute and before that dispute had been handled on the property, which is a prerequisite to taking a dispute to the Adjustment Board. The appellees there contended that, under *Manion*, a strike over a minor dispute "may not be enjoined unless the jurisdiction of the Adjustment Board has already attached" (p. 153). The Court commented that neither party could take the dis-

pute to the Adjustment Board since it had not as yet been handled on the property and held:

> ". . .. We think that in that posture of affairs the principle of Chicago River would apply and that had an injunction been sought because the strike was illegal, it would lie to prevent the frustration of the statutory grievance-adjustment procedure." (p. 154).

Also contrary to petitioners' contention respecting the *Manion* case in the very recent case of *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, wherein the Court said:

> "If an unfavorable award results in a strike the carrier may obtain injunctive relief. Railroad Trainmen v. Chicago River & I. R. Co., 353 U. S. 30. . . ."

Rather than being in conflict with applicable decisions of this Court, the decisions of the District Court and the Court of Appeals are in full accord with them. Indicative that judicial review is to be the exclusive remedy to enforce Adjustment Board awards, this Court, in the case of *Switchmen's Union* v. *Board*, 320 U. S. 297, stated:

> ". . . All constitutional questions aside, it is for Congress to determine how the rights which it creates shall be enforced. *Tutun* v. *United States*, 270 U. S. 568, 576-577. In such a case the specification of one remedy normally excludes another. . . ." (p. 301).

This latter principle was reaffirmed in the case of *Union Pacific R. Co.* v. *Price*, 360 U. S. 601, 608, when the Court said:

> ". . . Furthermore, we have said of the Railway Labor Act that 'the specification of one remedy normally excludes another.' *Switchmen's Union* v. *National Mediation Board*, 320 U. S. 297, 301. . . ."

Mr. Justice Black, in his dissenting opinion in *Pennsylvania R. Co.* v. *Day*, 360 U. S. 548, 558-559, stated:

> ". . . For, under §3 First (p) of the Act, if a carrier does not voluntarily comply with the Board's award, including wage awards for money damages, a wage earner can enforce the Board's order *only* by bringing, in a United States District Court, a suit which 'shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated. . . .'" (Emphasis added).

Mr. Justice Douglas, in his dissenting opinion in *Union Pacific R. Co.* v. *Price*, *supra*, said:

> "Tolerance of judicial review has been more and more the rule as against the claim of administrative finality. See *Shields* v. *Utah Idaho R. Co.*, 305 U. S. 177, 183; *Stark* v. *Wickard*, 321 U. S. 288, 309-310; *Harmon* v. *Brucker*, 355 U. S. 579, 581-582; *Leedom* v. *Kyne*, 358 U. S. 184, 190. The weight of the Administrative Procedure Act, 60 Stat. 243, 5 U. S. C. § 1009, is on the side of

judicial review, the finality of administrative action being sanctioned only where it is clear from the statutory scheme that judicial review is precluded." (p. 619).

While it is true that the two immediately preceding quotations are from dissenting opinions, it is no less true that they are in no respect conflicting with the majority opinions on which we have relied interpreting Section 3 First (p) of the Act.

The decisions of the District Court and the Court of Appeals are in full accord—not only with the decisions of this Court—but with other District Courts and Courts of Appeals.

In Re Chicago Great Western R. Co., 17 F. Supp. 932 (D.C. Ill.), is in point here. It is interesting to note that the money awards there involved were not paid when awarded by the Adjustment Board, and the trustee in bankruptcy of the railroad sought instructions concerning the payment of such awards and when it would be safe for him to make such payments. The Court instructed him to refrain from paying the awards made by the Board unless and until they were estabilshed and adjudicated as valid by the final judgment of a Court of competent jurisdiction. Certainly, such a ruling would not have been a correct one if the Court in its advice had subjected the bankrupt railroad to a strike which would surely have worsened its condition.

Without exception, every Court that has spoken with reference to a strike to enforce an Adjustment Board award has said that such a strike is illegal.

In the case of *Grand Trunk Western R. R. Co.* v. *Railroad Trainmen*, 32 Labor Cases CCH ¶ 70,695, (United States District Court, Northern District of Illinois, Eastern Division No. 57C479, March 19, 1957) the Court said:

> "The controversy between the plaintiff and defendants arises out of four disputes involving the interpretation or application of existing collective bargaining agreements, or the interpretation of an award of a Systems Board of Adjustment."
>
> . . . . . .
>
> "The threatened strike if carried into effect would be illegal and constitute a violation of the Railway Labor Act (45 U.S.C. Section 151, et seq.)."

The Court, in the case of *Baltimore & Ohio R. Co.* v. *United Railroad Workers, Etc.*, 176 F. Supp. 53, 58 (D.C. N.Y.), stated:

> ". . . In the case of a minor dispute a strike during the pendency of the matter before the Adjustment Board is illegal and may be enjoined. There is no right to strike or to use any economic self-help or pressure even after the award has been made and the parties are bound to comply with it. . . ."

The Court of Appeals for the Seventh Circuit had the same opinion. In the case of *Chicago River & Indiana R. Co.* v. *Brotherhood of Rail. T.*, 229 F. 2d 926, 931 (C.A. 7), it stated:

". . . Except in instances where judicial review and enforcement of awards are expressly provided for or contemplated by the act, § 3, First (p); cf. § 3, First (m), the Board's decisions are final and binding. We hold this to mean that a strike in regard to such minor disputes, or the Board's decisions thereon, would be illegal."

In the unreported case of *Atlantic Coast Line Railroad Company, etc., et al.* v. *System Federation No. 44, etc., et al.*, U. S. District Court for the Eastern District of Tennessee, Northeastern Division, Civil Action, File No. 1430, Feb. 27, 1960 (289b-292b) the Court, after a hearing, granted a preliminary injunction enjoining a strike to enforce an Adjustment Board award. That case was appealed to the Court of Appeals for the Sixth Circuit. However, by a stipulation filed in the appealed case, it was shown that the strike threat was withdrawn, that an enforcement suit had been filed and a dismissal of the appeal was, by agreement, sought. Pursuant to the stipulation, the appeal was dismissed.

In the case of *Denver & R. G. W. R. Co.* v. *Brotherhood of Railroad Train.*, 185 F. Supp. 369, 372 (D.C. Colo.), the Court enjoined a strike to enforce an Adjustment Board award and held:

"To hold that the procedures for decision are exclusive and that the procedure for enforcement is not exclusive would be inconsistent with the purposes of the Act. The injury to the public is the same whether the interruption of interstate commerce is for the purpose of obtaining a decision or for the purpose of enforcing a decision. To per-

> mit the interruption of service for the purpose of enforcing a decision of the Adjustment Board, when the Act itself provide a remedy for such enforcement, would defeat the essential purposes of the Act."

The latter case was affirmed by the Court of Appeals for the Tenth Circuit, April 13, 1961, by the case of *Brotherhood of Railroad Trainmen, et al. v. The Denver and Rio Grande Western Railroad Company*, 290 F. 2d 266, cert. den. 366 U. S. 966, rehearing den. 368 U. S. 873. In its opinion the Court held:

> "We agree with the trial court that the strike call was illegal because in disputes of the nature here involved the statutory remedy is exclusive, and the Board's money award may be enforced only by an action in the United States District Court as provided for in Section 3, First (p) of the Act. 45 U.S.C.A. § 153, First (p)."

Thus, it will be seen that the opinions of many Courts lead to the conclusion that the enforcement proceeding provided for by the Act is an exclusive remedy. Additionally, when an opinion as to the legality of a strike to enforce an Adjustment Board award was actually discussed, five U. S. District Courts (including the Court whose opinion was appealed in the instant case) and three U. S. Courts of Appeals (including the Court whose opinion is being attacked in this case), all agreed that such a strike was illegal and should be enjoined. Not one Court has held otherwise.

CONCLUSION.

The decision below is correct and required by recent decisions of this Court. No unsettled question of importance is actually presented, and there is no conflict of decisions. Accordingly, a writ of certiorari should not issue.

Respectfully submitted.

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APPENDIX.

Statutes Involved.

Section 2 of the Railway Labor Act provides (45 U.S.C. § 151a):

"General Purposes

"(1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions."

Section 2 First of the Railway Labor Act provides (45 U.S.C. § 152 First):

"First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof."

Section 3 First (i) of the Railway Labor Act provides (45 U.S.C. § 153 First (i)):

> "(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes."

Section 3 First (m) of the Railway Labor Act provides (45 U.S.C. § 153 First (m)):

> "(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute, except insofar as they shall contain a money award. In case a dispute arises involving an interpretation of the award, the division of the Board upon request of either party shall interpret the award in the light of the dispute."

Section 3 First (p) of the Railway Labor Act provides (45 U.S.C. § 153 First (p)):

> "(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for

whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be prima facie evidence of the facts therein stated, and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If the petitioner shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board."

Section 7 First of the Railway Labor Act provides (45 U.S.C § 157 First):

"First. Whenever a controversy shall arise between a carrier or carriers and its or their employees which is not settled either in conference between representatives of the parties or by the appropriate adjustment board or through mediation, in the manner provided in the preceding sections, such controversy may,

by agreement of the parties to such controversy, be submitted to the arbitration of a board of three (or, if the parties to the controversy so stipulate, of six) persons: PROVIDED, HOWEVER, That the failure or refusal of either party to submit a controversy to arbitration shall not be construed as a violation of any legal obligation imposed upon such party by the terms of this Act or otherwise."

CERTIFICATE OF SERVICE.

I, M. D. Jones, one of the attorneys for respondent, Louisville and Nashville Railroad Company, and a member of the Bar of the Supreme Court of the United States, do hereby certify that on the 11th day of May, 1962, I served copies of the foregoing brief on the petitioners, by mailing copies in duly addressed envelopes, with first-class postage prepaid, to the following attorneys of record:

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